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7 EQUITY GROWTH ASSET  
8 MANAGEMENT,  
9 Plaintiff,  
10 v.  
11 MELVIN HOLDEN, et al.,  
12 Defendants.

Case No. [4:19-cv-01505-KAW](#)

**ORDER REASSIGNING CASE TO A  
DISTRICT JUDGE; REPORT AND  
RECOMMENDATION TO REMAND  
TO STATE COURT; ORDER  
GRANTING IN FORMA PAUPERIS  
APPLICATIONS**

Re: Dkt. Nos. 1, 3, 4

13 On March 22, 2019, Defendants Melvin and Nancy Holden removed this unlawful detainer  
14 action from San Francisco County Superior Court, and applied to proceed *in forma pauperis*. (Not.  
15 of Removal, Dkt. No. 1; IFP Appl., Dkt. Nos. 3 & 4.)

16 As removal is clearly improper, and the parties have not consented to the undersigned, for  
17 the reasons set forth below, the Court reassigns this case to a district judge and recommends that  
18 the case be remanded to state court. Additionally, the Court grants Defendant's application to  
19 proceed *in forma pauperis*.

20 **I. BACKGROUND**

21 Plaintiff Equity Growth Asset Management commenced this unlawful detainer action  
22 against Defendant in San Francisco County Superior Court on or around May 15, 2018. (Compl.,  
23 Not. of Removal, Ex. 1.) The complaint contains a single cause of action for unlawful detainer.  
24 *Id.* The case is a "limited civil case," in which Plaintiff seeks immediate possession of a certain  
25 property located in San Francisco, California, which Defendants occupy.

26 On May 4, 2018, Plaintiff allegedly served a written notice on Defendant to pay rent or  
27 quit within three days. (Compl. ¶ 7.) Defendants did not pay as required before the notice period  
28 expired at the end of May 7, 2018. *Id.* On May 15, 2018, Plaintiff filed the instant unlawful

1 detainer suit in state court. On March 22, 2019, Defendants removed the action to federal court on  
2 the separate grounds that it presents a federal question and that diversity jurisdiction exists. (Not.  
3 of Removal at 2.)

4 **II. LEGAL STANDARD**

5 Federal courts exercise limited jurisdiction. A “federal court is presumed to lack  
6 jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock W., Inc. v.*  
7 *Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989) (citation omitted). A defendant may  
8 remove a civil action from state court to federal court if original jurisdiction would have existed at  
9 the time the complaint was filed. *See* 28 U.S.C. § 1441(a). “[R]emoval statutes are strictly  
10 construed against removal.” *Luther v. Countrywide Homes Loans Servicing, LP*, 533 F.3d 1031,  
11 1034 (9th Cir. 2008). “Federal jurisdiction must be rejected if there is any doubt as to the right of  
12 removal in the first instance,” such that courts must resolve all doubts as to removability in favor  
13 of remand. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The burden of establishing that  
14 federal jurisdiction exists is on the party seeking removal. *See id.* at 566-67.

15 Federal district courts have original jurisdiction over actions that present a federal question  
16 or those based on diversity jurisdiction. *See Wayne v. DHL Worldwide Express*, 294 F.3d 1179,  
17 1183 & n.2 (9th Cir. 2002). Federal district courts have federal question jurisdiction over “all civil  
18 actions arising under the Constitution, laws or treaties of the United States.” 28 U.S.C. § 1331.  
19 Federal question jurisdiction is governed by the well-pleaded complaint rule, which provides that  
20 the basis for federal jurisdiction must appear on the face of the properly pleaded complaint, either  
21 because the complaint directly raises an issue of federal law or because the plaintiff’s “right to  
22 relief under state law requires resolution of a substantial question of federal law in dispute  
23 between the parties.” *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust for S. Cal.*,  
24 463 U.S. 1, 13 (1983). “[A] case may not be removed to federal court on the basis of a federal  
25 defense . . . , even if the defense is anticipated in the plaintiff’s complaint . . . .” *Caterpillar Inc. v.*  
26 *Williams*, 482 U.S. 386, 393 (1987) (citation omitted).

27 **III. DISCUSSION**

28 Defendants removed this unlawful detainer action from state court on the separate grounds

1 that the district court has jurisdiction because the case presents a federal question and that there is  
2 diversity jurisdiction.

3       **A. Federal Question Jurisdiction**

4       Defendants claim that a federal question exists because Plaintiff may not have standing to  
5 pursue this action due to “the construction of the Pooling and Service Agreement of the Plaintiff  
6 Equity Growth Asset Management.” (Not. of Removal ¶¶ 9, 12.) Whether a party has standing is  
7 not a matter of federal law, and the lawsuit is not removable on that basis. Defendants’ argument  
8 appears to be an attack on Plaintiff’s corporate form. Defendants’ rights in an unlawful detainer  
9 action, however, depend on the interpretation of state law. Further, Defendants have not shown  
10 why the resolution of Plaintiff’s unlawful detainer claim will turn on a substantial question of  
11 federal law. The complaint, therefore, fails to present a federal question or a substantial question  
12 of federal law.

13       Moreover, the well-pleaded complaint rule prevents the Court from considering any  
14 additional claims, such that a defendant cannot create federal question jurisdiction by adding  
15 claims or defenses to a notice of removal. *See Provincial Gov’t of Marinduque v. Placer Dome,*  
16 *Inc.*, 582 F.3d 1083, 1086 (9th Cir. 2009); *see also McAtee v. Capital One, F.S.B.*, 479 F.3d 1143,  
17 1145 (9th Cir. 2007) (even previously asserted counterclaims raising federal issue will not permit  
18 removal). Accordingly, Defendants’ claim Plaintiff may not have standing to sue does not  
19 establish federal question jurisdiction in this matter. Thus, Defendants’ contention that there are  
20 federal questions at issue in this litigation is misplaced.

21       Lastly, the limited scope of unlawful detainer proceedings precludes cross-complaints or  
22 counterclaims. *See Knowles v. Robinson*, 60 Cal. 2d 620, 626-27 (1963). Thus, to the extent that  
23 Defendants’ assertions could be contained in any such filing, they would, nonetheless, fail to  
24 introduce a basis for federal question jurisdiction.

25       **B. Diversity Jurisdiction**

26       District courts also have original jurisdiction over all civil actions “where the matter in  
27 controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is between .  
28 . . citizens of different States.” 28 U.S.C. § 1332(a). When federal subject-matter jurisdiction is

1 predicated on diversity of citizenship, complete diversity must exist between the opposing parties.  
2 *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373-74 (1978). Under the forum defendant  
3 rule, “a civil action otherwise removable solely on the basis of [diversity jurisdiction] may not be  
4 removed if any of the parties in interest properly joined and served as defendants is a citizen of the  
5 State in which such action is brought.” 28 U.S.C. § 1441(b). Here, Plaintiff, a corporation, is a  
6 citizen of California, and Defendants are also citizens of California. Thus, even if there was  
7 complete diversity of citizenship, the forum defendant rule applies, and the action is not removable  
8 on the basis of diversity jurisdiction. See 28 U.S.C. § 1441(b).

9 **IV. CONCLUSION**

10 For the reasons set forth above, the Court REASSIGNS this action to a district judge with  
11 the recommendation that the action be REMANDED to state court for further proceedings. The  
12 Court GRANTS Defendants’ requests to proceed *in forma pauperis*.

13 Any party may file objections to this report and recommendation with the district judge  
14 within 14 days of being served with a copy. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); N.D.  
15 Civil L.R. 72-3. The parties are advised that failure to file objections within the specified time  
16 may waive the right to appeal the district court’s order. *IBEW Local 595 Trust Funds v. ACS*  
17 *Controls Corp.*, No. C-10-5568, 2011 WL 1496056, at \*3 (N.D. Cal. Apr. 20, 2011).

18 IT IS SO RECOMMENDED.

19 Dated: March 25, 2019

  
20 KANDIS A. WESTMORE  
21 United States Magistrate Judge

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